Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services	)	WT Docket No. 02-381
	)	
2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services	)	WT Docket No. 01-14
	)	
Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation	)	WT Docket No. 03-202

To: The Commission

REPLY COMMENTS OF
DOBSON COMMUNICATIONS CORPORATION

Dobson Communications Corporation ("Dobson") hereby submits its reply to comments filed in response to the Commission's *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] As urged in Dobson's own comments filed previously in the *Rural FNRPM* proceeding, the majority of commenters strongly argue that the cellular "keep what you use" model is unnecessary for the promotion of rural deployment on licensed spectrum. The Commission should not replace the more efficient marketplace allocation of spectrum and services with unnecessary regulation but should instead focus its efforts on providing financial-based incentives to spur rural deployment as discussed by Dobson and other commenters.

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[1] *Facilitating the Provision of Spectrum Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, WT Docket No. 02-381, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-166 (rel. Sept. 27, 2004) ("*Rural R&O and Rural FNPRM*").

I. The Current Market Dynamic Is Successfully Delivering Service To Rural Areas.

Commenters have provided the Commission with convincing evidence that the existing market-based mechanisms are working quite well to achieve the Commission's objectives for wireless telecommunications in rural markets.[2] In addition to the evidence presented by Dobson in its comments, other commenters highlighted that:

- Rural consumers typically have a choice of three to five facilities-based carriers, and of those typically two or more are national or large regional players.[3]
- Market-oriented policies "have encouraged carriers to take risks and expand services" in rural areas.[4]
- In just a year, the Commission's secondary markets initiative has led to the acceptance (as of January 14, 2005) of 15 broadband PCS spectrum manager lease notifications and the grant of 13 broadband PCS, 7 cellular, and 39 ESMR-related *de facto* transfer lease applications.[5] These numbers also do not reflect those lease arrangements for which applications have been filed but have not yet appeared on public notice.[6]
- The Commission's spectrum partitioning and disaggregation policies have been extremely successful in ensuring that spectrum is used by those who value it most.[7]
- The Commission has previously found that over 60 percent of all counties in the broadband PCS service have been partitioned at least once.[8]
- To the extent that unused spectrum may be unavailable in a particular market, there are several opportunities on the horizon for a new entrant to obtain spectrum at auction, including auctions slated for Advanced Wireless Service ("AWS") in the

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[2] *See* Comments of Nextel Partners, Inc., WT Docket No. 02-381, at 5-7 (filed Jan. 14, 2005) ("Nextel Partners Comments") (supporting existing policies that have largely been responsible for fostering Nextel Partners' growth and success); Comments of Cingular Wireless LLC, WT Docket No. 02-381, at 6-7 (filed Jan. 14, 2005) ("Cingular Comments") (discussing the certainty that is provided by the current rules); Sprint Comments, WT Docket No. 02-381, at 2-4 (filed Jan. 14, 2005) ("Sprint Comments") (pointing out that wireless carriers will enter the market where it is economically feasible to do so); Comments of T-Mobile USA, Inc., WT Docket No. 02-381, at 2 (filed Jan. 14, 2005) ("T-Mobile Comments") (stating that existing policies already provide strong incentives to build-out); Comments of CTIA – The Wireless Association, WT Docket No. 02-381, at 4-6 (filed Jan. 14, 2005) ("CTIA Comments") (favoring the "light-handed, market-oriented regulation" that has been a huge success).

[3] *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, WT Docket No. 04-111, *Ninth Report*, 19 FCC Rcd 20597, 20643 (2004) ("*Ninth Report*").

[4] CTIA Comments at 2.

[5] *See id.* at 9-10.

[6] For example, Dobson has filed notifications in connection with three spectrum manager leases, none of which have appeared on public notice.

[7] *See* CTIA Comments at 8-9.

[8] *See* Sprint Comments at 6.

> 1.7/2.1 GHz band and the H and J Blocks in the 1.9/2.1 GHz band, the upper and lower 700 MHz bands and the 900 MHz white space spectrum.[9]

In contrast to the specific factual evidence provided by the majority of the commenting carriers, the Rural Cellular Association ("RCA"), the Rural Telecommunications Group, Inc. ("RTG"), and the National Telecommunications Cooperative Association ("NTCA") (collectively referred to as "the Rural Commenters") offered only vague generalizations, needlessly denigrating the current system without providing any evidence of market failure.[10] For example, without providing specific instances in which any of their members were unable after reasonable commercial attempts to access spectrum in the marketplace, the Rural Commenters state that "rural carriers are have been [sic] consistently shut out of such transactions by nationwide carriers."[11] Similarly, they alleged, without providing any specifics, that the partitioning, disaggregation, and spectrum leasing process "can be lengthy, burdensome, and often, unsuccessful."[12] In fact, the only record evidence provided by the Rural Commenters, in NTCA's own member survey for 2004, shows that barely eight percent of NCTA's members even attempted to enter into negotiations to acquire spectrum through spectrum leasing, with no statistics provided on whether those members were successful.[13] Dobson, which also predominantly serves areas that the FCC characterizes as rural, has successfully obtained access

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[9] *See* CTIA Comments at 10-11; FCC News Release, *FCC Proposes Additional Flexibility in the 900 MHz Spectrum Band* (Feb. 10, 2004); FCC News Release, *FCC To Commence Spectrum Auction That Will Provide American Consumers New Wireless Broadband Services*, (Dec. 29, 2004)(announcing that AWS licenses may be auctioned as early as June 2006). Additional broadband PCS spectrum is in the process of being auctioned as part of Auction No. 58.

[10] *See* Comments of RCA, WT Docket No. 02-381, at 3 (filed Jan. 13, 2005) ("RCA Comments"); Comments of the RTG, Inc., WT Docket No. 02-381, at 7-8 (filed Jan. 13, 2005) ("RTG Comments"); Comments of the NTCA, WT Docket No. 02-381, at 3 (rel. Jan. 14, 2005) ("NCTA Comments"); *see also* Nextel Partners Comments at 16.

[11] RTG Comments at 8.

[12] NTCA Comments at 3; *see also* RTG Comments at 8.

[13] *See* NTCA Comments at 3. Nextel Partners also point out that no rural carriers have actively sought out spectrum leasing opportunities from it. *See* Nextel Partners Comments at 16.

to spectrum through partitioning and leasing and suggests that its actual experience is far more demonstrative of the impact of the FCC's existing policies than the anecdotal claims of the Rural Commenters.[14]

II. A "Keep What You Use" Model Would Have Significant Repercussions For The Wireless Industry.

The nationwide carriers, like Dobson, unanimously opposed a "keep what you use" approach, which was clearly the most galvanizing issue addressed in the comments.[15] Similar to Dobson's argument in its initial comments, CTIA points out that "the current spectrum environment is almost completely different" from the static environment that necessitated extreme measures like "keep what you use" to spur wireless development in the 1980s.[16] The cellular unserved area process is no longer necessary in the current marketplace. Although unintended, "keep what you use" would "delay[] service,"[17] "reduce business opportunities and investment incentives in rural areas,"[18] "limit access to capital[…,]unsettle investor confidence,"[19] and "undermine auction integrity and existing rules designed to spur deployment in rural areas."[20] In addition, as a rural carrier itself, Dobson sees little benefit in the potential acquisition of the small pockets of isolated unserved areas that will be created from spectrum re-

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[14] *See* Nextel Partners Comments at 16; NCTA Comments at 3.

[15] *See* CTIA Comments at 6-15; Cingular Comments at 4-8; Nextel Partners Comments at 17-23; Sprint Comments at 2-10; T-Mobile Comments at 6-8.

[16] *See* CTIA Comments at 12.

[17] *Id.* 13.

[18] T-Mobile Comments at 8.

[19] *Id.* at 8.

[20] Cingular Comments at 6.

licensing; stand-alone systems are less likely to succeed in a competitive marketplace because they lack the necessary economies of scale.[21]

The Rural Commenters maintain that nationwide carriers will only partition, disaggregate, or lease spectrum to smaller carriers if faced with losing unused spectrum through a use-it-or-lose it approach.[22] Their assertion not only contradicts Dobson's own experience but, combined with the apparent lack of secondary market negotiations by the Rural Commenters, shows that these small carriers will simply "wait until the end of the build-out period to see whether they [can] obtain the spectrum for free or at a sharply discounted price."[23] The Commission should not implement spectrum take-backs so as to give carriers a disincentive to actively seek marketplace alternatives or virtual "freebies"; adoption of "keep what you use" would likely have such an effect.

As several commenters have already noted, the spectrum holdings of nationwide carriers in rural areas, combined with nationwide advertising campaigns, act to constrain prices at competitive rates in rural areas even though a national carrier may not actually provide facilities-based service in the rural area. Rural carriers recognize that if above-market rates are charged then national carriers have the ability through their spectrum holdings to enter the market at any time. Under a "keep what you use" model, however, a national carrier will lose its unused spectrum in rural areas thereby eliminating a powerful potential market entrant that acts to moderate the pricing of the rural carriers.

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[21] *See* Comments of Dobson Communication Corporation, WT Docket No. 02-381, at 12-13 (filed Feb. 3, 2003); *see also Ninth Report*, 19 FCC Rcd at 20620, 20640-41 (noting that economies of scale are crucial for successful deployment in rural areas).

[22] *See* RTG Comments at 8.

[23] Cingular Comments at 7.

Attempting to rebut the overwhelming evidence that a lack of deployment in small underserved areas is an efficient economic choice for many carriers, the Rural Commenters claim that the provision of service would be the driving factor in their decisions on rural deployment, and not economic motivations. They suggest that rural carriers will be motivated by this desire to provide service to constituents to build even in otherwise uneconomic areas if they are made available through spectrum take-backs.[24] RTG even suggests that national carriers do not properly understand the way that rural areas are developed when they assert that rural areas will only be served if and when it is economical to do so.[25]

While Dobson disagrees with RTG's suggestion that national carriers do not understand the motivations behind rural carrier deployment, more importantly, Dobson is itself a rural carrier, with roots in the development of rural wireline telephony to western Oklahoma. Indeed, Dobson has made providing service to rural areas a focal point of its business plan. It is because Dobson so clearly *understands* the needs of the rural marketplace that we find the Rural Commenters' position so short-sighted.[26] While RTG may be right that in some instances "the provision of meaningful service still outweighs financial [sic] the need to see a *fast* return on investment,"[27] the fact remains that every carrier's investors desire to exact an *eventual* return on investment. That simply is not possible unless wireless carriers serving these areas are being subsidized by other service offerings or supplemented with funds from federal and state programs intended to foster development into high-cost, low-revenue areas.

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[24] *See* RTG Comments at 6-7; NTCA Comments at 4-5.

[25] *See* RTG Comments at 6.

[26] *See id.* at 6-7.

[27] *Id.* at 6-7 (emphasis added).

It is disingenuous for RTG to argue that any companies (even cooperatives) do not need to have a business plan and an ability to achieve a positive return over time in the marketplace in order to attract investor capital and recoup costs of system development.[28] Without regard to its initial motives for developing a system into a rural area, a small rural carrier, just as the initial licensee, will inevitably need financial incentives from state or federal programs or some source of governmental financial assistance in order to sustain the provision of service to heretofore unserved areas. There is simply no reason to believe that rural carriers claiming spectrum through a "keep what you use" spectrum take-back will have more success than an existing carrier that has infrastructure in place to do so, and so imposition of such a requirement will *not* result in the entry of additional carriers into rural areas.

Finally, Dobson takes issue with RCA's statement that "it is difficult to perceive how a licensee's business plan would be radically altered, as is feared, by loss of spectrum for which the licensee found no use."[29] Dobson has paid substantial sums of money, obtained from lending institutions and investors, for the right to use spectrum throughout a given market area over the life of the license and its anticipated regular renewal. It has deployed its resources efficiently from both a short-term and a long-term strategic standpoint. Taking away spectrum rights over any part of a market creates uncertainty in the financial marketplace and inherently undervalues a carrier's spectrum asset, thereby hindering a carrier's continued ability to access capital for on-going and future business plans. Even NTCA and RTG recognize that carriers serving rural areas need additional time to successfully implement their business plans, so while spectrum may go unused today, there is no reason to believe, with advances in technology and service

[28] *See* NTCA Comments at 5 (stating that even cooperatives seek to turn a profit).

[29] RCA Comments at 5.

offerings, that such spectrum will not be needed tomorrow as part of a company's overall business plan.[30]

III. The Commission Should Instead Consider Financial-Based Incentives To Promote New Services Into Rural Areas.

Even if the smaller carriers' claim is accepted that no financial return on investment is required to serve some rural areas, Dobson (and virtually any other carrier) is unlikely to provide service in multiple areas that would likely lose the company money. Dobson reiterates that it strongly favors the provision of service to hard-to-serve rural areas, but believes that financial incentives such as the Universal Service Fund ("USF") are extremely important to facilitate deployment in currently unserved areas. T-Mobile agreed with Dobson that a "properly structured universal service fund would be more effective than the burdensome regulations contemplated … in assisting rural wireless providers with serving areas that would otherwise be uneconomical."[31]

The USF system in place is currently biased against wireless carriers. As T-Mobile points out, the large amount that wireless carriers pay into the USF is disproportionate compared with the small amount of money received in return.[32] Dobson believes the Commission should strongly consider adopting financial incentives that benefit wireless carriers on par with their financial contribution, streamline the procedures by which wireless carriers can apply for Eligible Telecommunications Carrier ("ETC") status, and avoid the imposition of restrictive requirements that limit wireless carriers access to universal service. These measures will be far

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[30] *See* NTCA Comments at 4 n.5; RTG Comments at 7.

[31] T-Mobile Comments at 11.

[32] *See id.* at 11 (According to T-Mobile, CMRS providers contributed 22% of the universal service funds, while receiving only 3% of the total funding. At the same time, Local Exchange Carriers ("LECs") contributed only 27% of the universal service funds, but received over 78% of the total funding.).

more effective than “keep what you use” spectrum take-backs in promoting wireless carriers’ provision of service to less economical rural areas.[33]

Finally, Dobson notes that all commenting parties, including the rural providers, oppose the imposition of renewal term substantial service requirements.[34] Further, no commenters supported spectrum underlays or easements as such a policy would have negative effects on rural and nationwide providers.[35]

CONCLUSION

For the reasons stated above, Dobson supports strengthening the current market-based policies already in place and opposes the imposition of a “keep what you use” cellular model.

Respectfully submitted,

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February 14, 2005

[33] *See* T-Mobile Comments at 12.

[34] *See* RTG Comments at 3; RCA Comments at 7-8.

[35] *See* Cingular Comments at 9-16; CTIA Comments at 16; T-Mobile Comments at 10.

CERTIFICATE OF SERVICE

I, Lee J. Rosen, hereby certify that on the 14th day of February 2005, copies of the foregoing "Reply Comments of Dobson Communications Corporation" have been served by first class mail, postage prepaid to the following:

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_/s/ Lee J. Rosen_____________
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